

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES C. SHERROD,

Plaintiff

vs.

BOOKER T. WASHINGTON CENTER,

Defendant

Civil Action No. C.A. 04 – 208 ERIE

**Magistrate Judge Susan Paradise
Baxter**

**DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION OF JULY 24, 2006**

AND NOW, comes the Defendant, Booker T. Washington Center ("BTWC"), by and through its attorneys, Quinn Buseck Leemhuis Toohey & Kroto, Inc., and files the within Motion to Strike Plaintiff's Objections to the Magistrate Judge's Report and Recommendation, of which the following is a statement:

1. On July 24, 2006, the Magistrate Judge issued a Report and Recommendation in the above captioned matter, recommending that Summary Judgment be granted in favor of the Defendant, BTWC.
2. That Report and Recommendation was served electronically on and received by counsel for both parties on July 24, 2006.
3. The Report and Recommendation also contained – directly below the ruling and above the Magistrate Judge's electronic signature – the following language:

In accordance with the Magistrates Act, 28 U.S.C. Section 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.

4. Ten (10) days from the date of service – July 24, 2006, in this matter – is August 3, 2006.

5. Assuming that Fed.R.Civ.P. Rule 6(a) applies to this situation, the intervening weekends – July 29-30 and August 5-6 – would not factor into the ten (10) day period, which would then end on August 7, 2006 (July 25-28 and 31, August 1-4 and 7). It is noted, though, that the Clerk's office was accessible to Plaintiff through the electronic filing system at all times during this period, including weekends.

6. During that ten (10) day period (regardless of how it is calculated), Plaintiff filed no objections and sought from the Court no extension of time within which to file objections.

7. On August 10, 2006, Plaintiff filed an “appeal” to the Magistrate Judge’s Report and Recommendation.

8. At no time has the Plaintiff sought leave of Court to allow for the untimely filing of Objections to the Magistrate Judge’s Report and Recommendation.

9. Plaintiff in this matter is not *pro se*, but it represented by counsel who has been in practice for at least 20 years and who should be fully conversant with the rules of those Courts before which she practices.

10. In communications on August 8, 2006, Plaintiff’s counsel indicated that she relied on the text of the Clerk’s docket entry when determining that her objections were due on August 10.

11. Plaintiff’s (and Plaintiff’s counsel’s) purported reliance on the text of the Clerk’s docket entry is unreasonable and inexcusable, especially in light of the very

clear direction set forth in the Magistrate Judge's Report and Recommendation, as required by both statute and Local Rule of Court.

12. Accordingly, Plaintiff's Objections to the Magistrate Judge's Report and Recommendation must be stricken as untimely. Hammer v. Cardio Medical Products, Inc., 2006 WL 89927, W.D.Pa., January 11, 2006.

WHEREFORE, the Defendant, Booker T. Washington Center, Inc., respectfully requests that this Honorable Court strike Plaintiff's untimely Objections to the Magistrate Judge's Report and Recommendation.

Respectfully submitted,

QUINN, BUSECK, LEEMHUIS, TOOHEY
& KROTO, INC.

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